IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22-03-2002

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The Honble Mr. Justice P. SATHASIVAM

Writ Petition Nos. 4782 of 2002
and 5040, 5641 and 5691 of 2002

and WPMP Nos. 6758, 7095, 7842 and 7901 of 2002

W.P.No.4782 of 2002

Mrs. Sheela Selwyn. .. Petitioner.
Vs.

1. Chennai Metropolitan Water Supply
and Sewerage Board, represented by
its Chairman,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

2. The Manager,
Purchase Division,
Materials Department,
Chennai Metropolitan Water Supply
and Sewerage Board, No.1, Pumping
Station Road, Chintadripet, Chennai-600 002.

W.P.No. 5040 of 2002

R. Prema.
.. Petitioner.
Vs.
Chennai Metropolitan Water Supply
and Sewerage Board, represented by
its Managing Director,
No.1, Pumping Station Road, Chennai-600 002.

.. Respondent.

W.P.No. 5641 of 2002

1. S.K. Muthaiah,
2. S. Murugaiah,
3. S. Subhulakshmi,
4. R. Arasakumari,

5. G. Kannadasan,
6. M. Muthu,
7. R. Vijanandan,
8. L. Shanmugam,
9. G. Saravaan,
10. C. Napolean.
.. Petitioners.
Vs.

Chennai Metropolitan Water Supply and Sewerage Board (Materials Department: Purchase Division), represented by its Purchase Manager, No.1, Pumping Station Road, Chintadripet, Chennai-600 002.

.. Respondent.

W.P.No. 5691 of 2002

1. Azeezullakhan,
2. Faiz Ahmed,
3. Mrs. Mushthari,
4. A. Jakir,
5. K. Thyagarajan,
6. C. Muthu,
7. Dilli Babu,
8. T.K. Desaya,
9. G. Meera,
10. H. Selvi,
11. N. Ayub,
12. Sigamani,
13. Mani,
14. S. Swaminathan,
15. Parthasarathi,
16. Mohammed Habeeb,
17. Mohammed Hussain,
18. G. Allaudeen,
19. Saravanan,
20. A. Khaleel Rahman,
21. L. Ansar Bi,
22. P. Pandian,
23. Pandian, A.
24. Sankar,
25. Dharani
26. D. Ismail,
27. P. Indra,
28. Azmath,
29. Vetri.

.. Petitioners.
Vs.

Chennai Metropolitan Water Supply
and Sewerage Board, Pumping Station
Road, Chintadripet, Chennai-600 002.

.. Respondent.

Peititions under Article 226 of the Constitution of India
for issuance of a Writ of Certiorarified Mandamus as stated therein.

! Mr. M. Ravindran, Senior Advocate for
Mr. V. Viswanathan:- For petitioner in WP.4782/2002

Mr. S. Muthukumar:- For petitioner in WP.5040/2002.

Mr. K.A. Ravindran:-For petitioner in WP.5641/2002.

Mr. K. Govi Ganesan:-For petitioner in WP.5691/2002

^ Mr. A.L. Somayaji, Senior counsel for Mr.V.Perumal:
For respondents 1 and 2 in W.P.4782/2002 and for
respondent in other W.Ps.

: COMMON ORDER

Since the issue raised in all these writ petitions is one and the same, they are being disposed of by the following common order.

2. The petitioners are owners of water tankers. The only grievance of the petitioners in W.P.Nos. 4782, 5641 and 5691/2002 is that certain conditions in Tender Schedule, namely, the description as to fixing the model of the vehicle as 1995 and condition No.13 under the heading Damage are unsustainable. The claim of the petitioner in W.P.No. 5040 of 2002 is that the action of the respondent giving preference to the existing contractors, operating with vehicles of 16 years and above model in the tender is arbitrary.

3. For convenience, I shall refer the case of the petitioner in W.P.No. 4782 of 2002. According to her, she possesses a water tanker with Registration No. TN 09D 8269 of the year 1993 which is fit for transportation of water. She has valid goods carriage permit and fitness certificate. Her vehicle has been hired by the respondents for transportation of water for the previous years. For the year 2002 -2003 a public notification was published in Tamil Daily Dhina Boomi dated 14-1-2002 wherein the respondents called for Tenders in Tender No. OT-07-2002 dated 11-1-2002. For the first time, the respondents while giving the description of vehicle have imposed a condition that lorries of 1995 and above model alone are eligible to participate in this tender and however, lorries prior to 1995 model will be considered as the second choice in case no sufficient lorries of 1995 or above model are available in the descending order of model. Even the vehicle of prior model may be maintained in good condition and vehicle of the later model may be in a

bad condition. After inspecting the vehicle and after driving the vehicle as a test drive, Fitness Certificate is given to a vehicle by the Motor Vehicle authorities. Once the authorities exercising power under the Motor Vehicles Act and Rules issue Fitness Certificate for the vehicle, that is conclusive proof of the condition of the vehicle. By imposing a condition with regard to model, the respondents are making a mockery of the powers exercised by the authorities under the Motor Vehicles Act.

4. Condition No.13 under the heading Damage is impracticable and humanly impossible. The other Government Corporations like Indian Oil Corporation, Bharath Petroleum, ESSO, Burma Shell, etc., have not imposed any such condition in their tender documents. All the vehicles are insured and Motor Vehicles Department issue Fitness Certificate and renew R.C.Book only if the v ehicle is insured. The conditions imposed by the respondents in the tender documents are arbitrary and illegal.

5. Similar averments have been made in W.P.Nos. 5641 and 5 691 of 2002.

6. In W.P.No. 5040 of 2002 the only grievance of the petitioner is that as per the Tender Schedule and conditions, if more than one tenderer has quoted lowest evaluated rate, then preference should be given to the latest model vehicles. If the newly participated tenderers and the existing contractors get qualified equally in both lowest rate and the model, preference will be given to the existing contractors running in the Board due to their experience. According to the petitioner, by giving preference to the exiting contractors running in the Metro Board, the new contractor/lorry operator like petitioner may not have a chance to use their vehicle for the purpose of transportation of water.

7. The respondents have filed separate but identical counter affidavit disputing the averments made by the petitioners. Here again, for convenience I shall refer the case of the respondents in W. P.No. 4782 of 2002. It is stated that the main aim of the Chennai Metropolitan Water Supply and Sewerage Board (in short the Board) is to provide water facilities in the City of Chennai. In order to achieve this aim, the Board has taken all possible steps to supply water to all sections of the society without any hardship or inconvenience to the public. To provide water, the first respondent has hired water tankers which are regulated by filling water at the filling points and the same is being verified at supply points by Depot Engineers. In order to provide adequate water facilities, the Board has engaged a number of lorries. On 11-1-2002 the Board has called for tenders for the purpose of providing water supply to the citizens of Chennai. The Board by taking into consideration of the environmental conditions and general public safety and to prevent accidents has imposed several conditions in the tender dated 11-01-2002.

8. The fixation of 1995 model water lorry is based on the guidelines issued by the Secretary to Government, Home-Transport V Department, Government of Tamil Nadu after consulting the Chairperson, Tamil Nadu Pollution Control Board. The Board being a Government Organisation is bound to adhere to the conditions and instructions issued by the

Government in the interest of general public. The vehicles bearing 1995 registration are serviceable vehicles and the vehicles prior to 1995 vehicles are serviced vehicles and cannot be compared. The Fitness Certificate issued by R.T.O. every year is meant for the road worthiness and other parameters wh ich are not related to the purpose of specific services expected by the respondent i.e., in order to engage the vehicle through contract for the purpose of carrying water to the public on payment of hire charges. Hence the respondents are at liberty to fix the model of the vehicle in accordance with the instructions issued by the Government and in order to satisfy the pollution control norms and such conditions imposed by the respondents cannot be termed as arbitrary or illegal.

9. Regarding condition No.13, the Metro Water being a public utility service is to safeguard the interest of the general public by imposing stringent safety measures. The above conditions have been introduced in order to avert the accidents caused by hired lorries. During the year 2001-2002, 48 numbers of water tankers hired by the Board met with fatal accidents. Hence, in order to avoid the accidents the Tender Scrutiny Committee imposed the conditions in public interest. Condition No.13 has been incorporated in the Tender Schedule with the aim of enforcing drivers to follow traffic rules and to minimise accidents and to safeguard the general public from loss of their lives by the tanker lorries hired by the Board. In addition to this, with regard to the grievance expressed by the petitioner in W.P.No. 5 040 of 2002, it is stated that the petitioner can participate in the present tender and the tender will be awarded as per tender conditions. It is further stated that preference cannot be given to any individual contrary to the Tamil Nadu Transparency in Tenders Act and the selection of vehicle will be decided on due consideration of tender conditions and not on the basis of any other criteria.

10. In the light of the above pleadings, I have heard the learned counsel for the petitioners as well as respondents.

11. Mr. M. Ravindran, learned senior counsel appearing for the petitioner in W.P.No. 4782 of 2002 has raised the following contentions:

i) In view of the provisions of the Motor Vehicles Act, 1988 and the Rules made thereunder, once the vehicle is registered, Fitness Certificate is issued by competent authority under the said Act and the Rules, the 1st respondent-Board cannot sit over them as an appellate authority and prescribe further conditions;

ii) The condition as to description, namely, that lorries of 1995 and above model alone are eligible to participate in the Tender and condition No.13 relating to fatal accident and cancellation of the contract are arbitrary and unreasonable.

M/s. K.A. Ravindran and K. Govi Ganesan, learned counsel for the petitioner in W.P.No. 5641/2002 and W.P.No. 5691/2002 respectively, adopted the above arguments. Mr. S. Muthukumar, learned counsel for the

petitioner in W.P.No. 5040/2002, would point out that by giving preference to the existing contractors running in the Board, even the persons having new model vehicles cannot enter into the field; accordingly the said condition cannot be sustained. On the other hand, Mr. A.L. Somayaji, learned senior counsel appearing for the respondents, contended that both the conditions were prescribed based on the guidelines issued by the Government, more particularly taking note of the public interest and safety. He also contended that apart from the Fitness Certificate and road worthiness, taking note of the other aspects viz., efficiency in service, public interest in order to avert accidents as well as clean environment, the respondents are entitled to impose reasonable conditions. He further contended that inasmuch as the respondent-Board took a policy decision considering the public interest and safety as well as clean environment etc., certain conditions have been issued in the tender schedule. He also contended that since those conditions got a nexus with the object to be achieved, it is neither arbitrary nor unreasonable; accordingly all the writ petitions are liable to be dismissed.

12. I have carefully considered the rival submissions.

13. There is no dispute that it is the first respondentBoard which is to provide water facilities in the City of Chennai. In order to provide adequate water facilities, the first respondent-Board has engaged a number of lorries which are regulated by filling water at the filling points and verified at supply points by Depot Engineers. On 11-01-2002 the Board has called for tenders for the said purpose of providing water supply to the citizens of Chennai and the same were published in Dailies. The petitioners are said to have been aggrieved by the following clauses in the tender schedule:

DESCRIPTION
(i) Providing lorries with water tankers of 9000 ltrs. capacity with rear engine pumpset on hire basis for transportation of water to locations as directed including operation and maintenance of rear engine pump set (lorries of 1995 and above model alone are eligible to participate in this tender. However, lorries prior to 1995 models will be considered as a second choice in case no sufficient lorries of 1995 and above model are available in the descending order of model.

AWARD OF WORK ORDER:
ii) The lowest rate quoted by the tenderer will be considered for award of contract. The vehicles, which are Euro I and Euro II compliant with cut off date at 1995 as the year of manufacture will be considered. If more than one tenderer has quoted lowest evaluated rate, then the preference will be given to the latest model. If the newly participated tenderers and existing contractors get qualified equally in both lowest rate and the model, preference will be given to the existing contractors running in the Board due to their experience. The tender will be evaluated as per the Tamil Nadu Transparency in Tenders Act, 1998.

CONDITION No.13

iii) DAMAGE: Utmost care should be taken to avoid accidents. The contractor will be responsible for all liabilities due to accidents or damages, caused to properties including loss of life of any public or employee of Board or Contractors employee.

In case of fatal accidents, the vehicle will be stopped from operation and the work order will be cancelled immediately without any prejudice and for all other minor accidents, the vehicle will be stopped from operation for minimum of 2 days.

Though the schedule contained other conditions, we are concerned with the above conditions only for the disposal of these writ petitions.

14. Mr. M. Ravindran, learned senior counsel appearing for the petitioner in W.P.No. 4782/2002, by drawing my attention to Condition No.(i)referred to above, would contend that inasmuch as the petitioner in W.P.No. 4782/2002 possessed with a water tanker with Registration No. TN09D 8269 of the year 1993 with valid Permit and Fitness Certificate issued by the competent Authority under the Motor Vehicles Act and is fit for transportation of water, the first respondent Board cannot prescribe further conditions. In support of his contention, he very much relied on Sections 53, 54, 56 and 59 of the Motor Vehicles Act, 1988. It is true that without a valid Permit and Fitness Certificate, no vehicle will be permitted to ply in public place. All these provisions deal with suspension and cancellation of registration, certificate of fitness of transport vehicles and power to fix the age limit of motor vehicle. Though the vehicles possessed by the petitioners are having fitness certificate, emission report to show that they (vehicles) satisfy the norms prescribed by the Pollution Control Board, as rightly argued by Mr. A.L. Somayaji, learned senior counsel for the respondents, the fitness certificate issued by the Regional Transport Officer every year is meant for the road worthiness and other parameters which are not related to the purpose of specific services expected by the respondent, namely, to engage the vehicle through contract for the purpose of carrying water to the public on payment of hire charges. It is also his contention that the first respondent is at liberty to fix the model of the vehicle in accordance with the instructions issued by the Government and to impose conditions to follow the emission control norms fixed by the Tamil Nadu Pollution Control Board, and in such a circumstance, the conditions imposed by the respondent cannot be termed as arbitrary or illegal. In this regard, the learned senior counsel very much relied on the Minutes of the meeting on Vehicles Emission problem held on 30-01-2002, according to which, a meeting was convened by Secretary to Government, Home department, Chennai in which the Chairperson, Tamil Nadu Pollution Control Board; Transport Commissioner, Chennai; Managing Director, CMWSS Board, Chennai; Managing Director, MTC., Chennai; Joint Commissioner of Police (North), Chennai; Joint Secretary, Home (Tr) Department, Chennai; Joint Transport Commissioner, Chennai and representatives from transport operators participated in the discussion on control of pollution caused by motor vehicles and the conclusion arrived at therein with regard to Metro Water Lorries is as follows:-

d) Metro Water Lorries:
Managing Director, CMWSS that only 350 water lorries are now plying in Chennai City. The number may increase once the summer sets in. The vehicles carrying water are procured through contract arrangements. Therefore, it was suggested that lorries satisfying Euro II norms shall be selected first. If such vehicles are not available, then vehicles satisfying Euro I norms can be procured. If there are difficulties in getting Euro I and Euro II norm vehicles, vehicles that are not more than 5 years old alone should be taken on contract. SAFE & TNPCB will also specify the norms for the pumps attached to the water lorries to be used by them as these also cause much noise and air pollution.
Action:-CMWSS Board, SAFE & TNPCB
It is clear that the decision taken by the first respondent fixing 1 995 model water lorry is based on the guidelines issued by the Secretary to Government, Home Department, Government of Tamil Nadu and after consultation with all the necessary departments including the Chairperson, Tamil Nadu Pollution Control Board. There is no dispute that the first respondent-Board, a Government organisation, is bound to adhere to the conditions and instructions issued by the Government in the interest of general public. Here, as stated earlier, the first respondent Board is bound to implement the guidelines issued by the Government, particularly considering the public interest.

15. Learned senior counsel for the petitioner by relying on a decision of this Court in Selvaraj, R. and others v. Deputy General Manager (incharge), Indian Oil Corporation Ltd., reported in 200 1 Writ L.R. 176, contended that the impugned condition in the tender schedule, particularly the restriction of age is arbitrary and unreasonable. The petitioners in that case are the registered transport contractors with the respondent-Indian Oil Corporation. After expiry of the existing contract, the Indian Oil Corporation issued a Notification, calling for tenders from the transport operators. The said Notification was published in the Tamil Daily on 29-3-2000. The petitioners applied for the tender forms by paying a sum of Rs.1,000/- and also by depositing the earnest money of Rs.10,000/-. After perusal of the tender conditions, they found that Clause 9 (c) of the tender condition has been newly introduced by the respondents enabling them to give preference to the truck owner/tenderer and among them the trucks less than five years old. Further the age of the vehicle was restricted that the same should not exceed 12 years on the date of opening the tender. Accordingly the writ petition has been filed challenging the said clause 9 (c) of the tender conditions to declare the same as unreasonable, discriminatory, arbitrary and ultra vires. The learned Judge, after referring to Clause 9 (c) of the Tender conditions as well as the notification issued by the respondent in the Dailies, in the absence of such restriction in the notification published in the Dailies, has come to the conclusion that the petitioners/vehicle operators cannot be taken by surprise by imposing certain other conditions in the tender form which the petitioners were not put on notice before ever the tender forms were purchased. Regarding the restriction of age, namely, 12 years, the learned Judge has held that absolutely no explanation for the respondents to give the preference to the contractors whose vehicles are

of the age of 5 years. The learned Judge further held:

10There cannot be a classification among the same group of classification. When once the age of the vehicle is restricted to 1 2 years, there should be uniformity that the tenderers who are having the vehicle less than 12 years old are entitled to submit their tender. They should be treated equally. There cannot be a preference among themselves by further restriction of the age of the vehicle to five years. In my opinion, it will be an arbitrary action on the part of the respondents when the counter itself is silent with regard to the nexus in imposing of conditions with the object that is going to be achieved. There is absolutely no reason or explanation in the counter as to why there should be a different category in respect of the vehicles i.e., one category-age below five years for preference and next category-below 12 years for general.

Accordingly, the learned Judge set aside the impugned order on two grounds that (1) the new clause has been introduced in the tender condition which is not specified in the notification calling for the tender pursuant to which the petitioners have purchased the tender forms; and that (2) restricting the age of the vehicle for preference is arbitrary, since the same has no nexus with the object that is to be achieved by the respondents. In so far as the first ground for quashing the tender condition, it is to be noted that absolutely there is no reference in the notification published in the Dailies with regard to the age restriction in the case before the learned Judge. As rightly pointed out by Mr. A.L. Somayaji, there is no need to publish all the tender conditions in the paper publication. Even otherwise, in the cases on hand, the tender notification published in the Tamil Dailies there is a specific reference stating that apart from these conditions the intending tenderers are requested to go through the tender conditions and schedule thereunder. In the last paragraph, it is specifically stated (tamil portion omitted)

It is clear that apart from the conditions referred to in the notification published in the dailies, the parties are advised to note full details available in the tender schedule. Such information is not available in the case before the learned Judge. Accordingly while holding that there is no need to incorporate all the tender conditions in the notification published in the dailies, in the light of the specific information that intending tenderers are to verify all the details in the tender schedule, the first reason given in the above referred judgement is not applicable to the cases on hand.

16. The other reason given therein is that restricting the age of the vehicle for preference is arbitrary since the same has no nexus with the object that is to be achieved by the respondents. In Clause 9 (c) of the Tender of Indian Oil Corporation, it is stated that subject to fulfilment of other terms and conditions IOC would give preference to firstly Bitumen Truck Owner tendered among them to Bitumen Trucks less than 5 years old and age of vehicle should not exceed 12 years on the date of opening tender. It is true that in that clause in order to prevent pollution, the

age of the vehicle was restricted to 12 years and thereafter preference was given to the contractors whose vehicles are of the age of 5 years. Here, in our case, in the first condition though it is stated that lorries of 1995 alone are eligible to participate in the tender, in the same clause, it is specifically stated that lorries prior to 1995 models will also be considered in case no sufficient lorries of 1995 and above model are available in the descending order of model. As rightly argued by Mr. A.L. Somayaji, there is no complete prohibition or bar of the persons having vehicles of prior to 1995. It is true that in the second condition it is stated that if the newly participated tenderers and the existing contractors get qualified equally in both lowest rate and the model, preference will be given to the existing contractors running in the Board due to their experience. Even this clause cannot be said to be either arbitrary or unreasonable. Here again, as rightly stated, because of their experience with regard to supply of water in time, their past performance, number of accidents etc., I am of the view that the first respondent is entitled to give preference to the existing contractors.

17. Learned senior counsel for the respondents by drawing my attention to the recent Division Bench decision of this Court in Swamidhas v. The Chief Engineer, National Highways, reported in 2001 (4) C.T.C. 257, would contend that in contractual matters the jurisdiction of this Court under Article 226 of the Constitution of India is very limited. In the case before the Division Bench, the Government invited tenders for undertaking work of widening road, construction of bridges etc. The Government stipulated that tender schedules should be issued only to those contractors owning Central Mixing Plant and paver. In other words, the ownership of machinery is condition precedent for issuance of tender schedule and has got nexus with the object of issuance of tender schedule. The persons who are not having the machineries and unable to secure the tender schedule filed writ petitions before this Court. The petitioners challenge the condition, namely, production of documentary evidence for ownership of the said machinery as arbitrary. Learned Single Judge has negatived their contention. Hence, they preferred writ appeals. After referring to a decision in R.D. Shetty v. International Airport Authority of India, AIR 1 979 S.C. 1628 and various tender conditions, the Honourable Chief Justice speaking for the Division Bench has held:

5Whether the acceptance of work and execution thereof is feasible and viable, is the concern of the party who makes a bid. The authority tendering the work is only concerned about the execution and the money payable therefore. In every contract, there will be clauses for due execution of the work and the consequences in default thereof. The laying of public road is important and urgent. Time schedule is three months from the date of awarding of contract. The authorities cannot and need not wait for the contractors like appellants to acquire the machinery by way of lease from other owners. In fact, that is a contingent situation. Even after contract is struck, there is no guarantee that machinery will be provided and if provided, as to the quality and working condition of the machinery. The public work cannot wait, risking such contingencies. As such, the authorities have rightly felt that there should be an

imposition of ownership of the machinery, as if such machinery is at the ready disposal of such successful contractor/s they can readily start the work and successfully complete the same within the time schedule. What is more, in view of numerous such contractors owning machinery, by no stretch of imagination can it be said that the imposition of condition No.5 is a tailor-made to suit one or a few individuals. In the circumstances, we find that the imposition of condition No.5 has got a nexus with the object to be achieved, and that it is neither arbitrary nor unreasonable and there is no infringement of any Fundamental Right of the appellants. In the circumstances, the complaint of the appellants that they were unreasonably deprived of supply of tender schedules, cannot be countenanced and the writ appeals fail and are accordingly dismissed

18. In United Labour Federation v. Union of India, reported in 2002 (1) CTC 193, the very same Division Bench has considered the scope of judicial review in a matter of awarding contract. In para 21, Their Lordships have held:-

21. Unlike in private contracts, the public contracts of the works relating to Government and Governmental Corporations should ordinarily be awarded by way of inviting tenders or public auction, i.e. with a view to give opportunity to all eligible persons to compete and also to fetch competitive price to the Government and the Governmental Corporations. Such process also ensures transparency. But that may not be possible in all types of works relating to Government or its Corporations. There may be circumstances to make an exception to the normal rule of tender/auction method. But the validity of such exemptions/exceptions has to be considered in the context of facts of each case. Such exemption should not be arbitrary and must be justifiable on the basis of some policy or valid principles, which, by themselves, are reasonable and not discriminatory.
Such policy evolved in each case of exemption should be done on some rational and reasonable grounds. While considering such aspects, the public interest should be at the forefront and if the public interest outweighs the individual interest, the policy evolved by the Government in a particular case in awarding contract otherwise than by tender/auction system, cannot be found fault with. Once a policy decision is taken on relevant considerations, it is held by the Supreme Court that it is not for the Courts to meddle with the said policy. It is also held emphatically that the Court cannot also substitute its opinion for the opinion arrived at by the authorities while taking decision to award the contract otherwise than by usual tender/auction system.

19. In LKP MERCHANT FINANCING LTD. v. AIRPORT AUTHORITY OF INDIA, reported in 1999 (III) CTC 525, this Court has held that:
17. The norms prescribed regarding qualification cannot be said to be arbitrary and the same have been prescribed only with a view to get experienced persons. This Court cannot sit on appeal on the decisions of the respondents. Merely because the petitioners could not participate in the tender, the condition cannot be set aside. The petitioners would get a right to participate, only if they are qualified as prescribed in the

tender conditions.

20. It is also relevant to note the judgment of the Supreme Court in Air India Ltd., v. Cochin International Airport Ltd., reported in (2000) 2 Supreme Court Cases 617. The following conclusion of Their Lordships is relevant: (para 7)
7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489; Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India, (1981) 1 SCC 568; CCE v. Dunlop India Ltd., (1985) 1 SCC 260 : 1985 SCC (Tax) 75; Tata Cellular v. Union of India (1994) 6 SCC 651; Ramniklal N. Bhutta v. State of Maharashtra (1997) 1 SCC 134; and Raunaq International Ltd., v. I.V.R. Construction Ltd., (1999) 1 SCC 49 2. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decisionmaking process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

21. Even in the decision in Tata Cellular v. Union of India, AIR 1996 S.C. 11, in paragraph 113, Their Lordships of the Apex Court summarised the scope of Judicial review, as follows:

113. The principles deducible from the above are:-
(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasiadministrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increase and unbudgeted expenditure.

Among these principles, principle No.4 is very relevant to the cases on hand. In that principle, Their Lordships have categorically held that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contact.

22.All the above decisions clearly show that the terms of the invitation to tender is in the realm of contract and that the same cannot be subject to judicial scrutiny. Even if it is accepted that that the Terms of the invitation to Tender require interference of this Court, in the light of the guidelines issued by the Government which was made in the wake of the consultation with the Tamil Nadu Pollution Control Board, the decision of the respondent-Board calling for Tenders fixing 1995 model water lorry alone are eligible to participate in the tender cannot be said to be either arbitrary or unreasonable. Further, as stated earlier, the description clause contained a provision for lorries prior to 1995 model also, viz., if lorries prior to 1995 models will also be considered as a second choice in case no sufficient lorries of 1995 and above model are available in the descending order of model.

23. Regarding the third condition (condition No.l3) in the tender schedule, as rightly contended, the Metro Water being a public utility service, its duty and responsibility is to safeguard the interest of the general public by imposing stringent safety measures. The safety of general public and reliability of these hired vehicles are to be taken care of by imposing certain disciplines to the contract agencies which execute the work of transporting water to the public on payment by the respondent. It is also explained on the side of the respondents that the above conditions have been introduced in order to avert the accidents caused by hired lorries. In para 9 of the counter affidavit, the Managing

Director of the first respondent has specifically stated that during the year 2001-2002, 48 numbers of water tankers hired by the Board met with fatal accidents. It is also relevant to note that in Chennai City alone 611 fatal and 4,631 nonfatal accidents had taken place in 2001 and 574 and 4,592 respectively during the year 2000 (vide- The Hindu (Chennai-Regional Edition) dated 23-2-2002). Hence, in order to avert the accidents, the first respondent-Board is fully justified in imposing these conditions in public interest. It is also explained that condition No.13 has been incorporated in the tender schedule with the aim of enforcing the drivers of the tanker lorries hired by the Board to follow traffic rules and to minimise the number of accidents and to safeguard the general public from the loss of life. Accordingly, I hold that the condition No.13 is also valid.

24. Coming to the contention raised by Mr. S. Muthukumar, learned counsel appearing for the petitioner in W.P.No. 5040/2002, it is stated in the counter affidavit that the petitioner can very well participate in the tender for the year 2002-2003 and the tender documents will be scrutinised strictly based on the conditions adumbrated in the tender. Even though it is stated in the tender schedule that preference should be given to the existing contractors running in the Board due to their experience, undoubtedly even those contractors have to satisfy the other conditions and the provisions of the Tamil Nadu Transparency in Tenders Act, 1998. Accordingly, the said contention is also liable to be rejected.

25. In the light of what is stated above, there is no merit in the claim made by the petitioners; consequently all the writ petitions fail and are accordingly dismissed. No costs. All the WP Misc.Petitions are also dismissed.

22-03-2002
Index:- Yes/I
R.B.
To:-

1. The Chairman, Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.

2. The Manager,
Purchase Division,
Materials Department,
Chennai Metropolitan Water Supply
and Sewerage Board, No.1, Pumping
Station Road, Chintadripet, Chennai-600 002.

P. SATHASIVAM,J

Common Order

in WP Nos. 4782,5040
5641 and 5691/2002
and
WPMPs.6758,7095,7842
and 7901/2002

Dt:- 22-03-2002